

RESOLUTION # 305-1215

**RESOLUTION AUTHORIZING EXECUTION OF RIGHTS OF WAY AGREEMENT  
BETWEEN THE TOWNSHIP OF NORTH BRUNSWICK AND FIBER TECHNOLOGIES  
NETWORKS, L.L.C. TO PERMIT THE INSTALLATION, USE AND MAINTENANCE OF  
TELECOMMUNICATIONS FACILITIES WITHIN PUBLIC RIGHTS-OF-WAY FOR PURPOSES  
OF PROVIDING TELECOMMUNICATIONS SERVICES**

**WHEREAS**, Fiber Technologies Networks, L.L.C. ("Fibertech"), a New York limited liability company, with offices located at 300 Meridian Centre, Rochester, New York, is authorized to provide local exchange and interexchange telecommunications services throughout the State of New Jersey pursuant to an Order issued by the New Jersey Board of Public Utilities in Docket No. TE05080683, dated September 14, 2005; and

**WHEREAS**, Fibertech has requested the consent of the Municipality to occupy public rights-of-way within the Municipality for a period of fifty (50) years, for the purpose of constructing, installing, operating, repairing, maintaining a telecommunications system ("purpose"); and

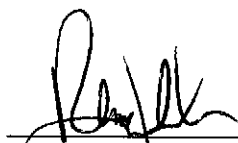
**WHEREAS**, it is deemed to be in the best interest of the Municipality and its citizenry, particularly including the commercial and industrial citizens, for the Municipality to grant municipal consent to Fibertech to occupy the public rights-of-way within the Municipality for this purpose; and

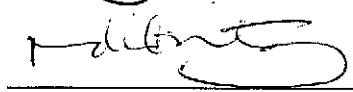
**WHEREAS**, the granting of such consent is and shall be conditional upon Fibertech's continued compliance with all existing and future ordinances of the Municipality and its entering into a written agreement with the Municipality to, inter alia, (i) indemnify and hold the Municipality harmless as to all claims and liability resulting from any injury or damage which may arise from the construction, installation, operation, repair, maintenance, replacement and removal of its telecommunications system within certain public rights-of-way and (ii) provide liability insurance coverage for personal injury and property damage;

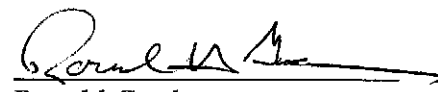
**NOW, THEREFORE BE IT RESOLVED**, by the Township Council of the Township of North Brunswick that non-exclusive consent is hereby granted to Fibertech to occupy the public rights-of-way within the Municipality for the purpose of construction, installation, operation, repair, and maintenance of a telecommunications system for a period of fifty (50) years, as more particularly set forth in the attached Agreement.

1. The within granted permission is conditioned upon Fibertech entering into the Agreement with the Municipality and providing liability and property damage insurance coverage.
2. The Mayor and Municipal Clerk are hereby authorized to execute the Agreement, attached hereto in form and substance.
3. A copy of this Resolution and the executed Agreement shall be filed in the Office of the Municipal Clerk.

Dated: \_\_\_\_\_

  
Robert Lombard  
Business Administrator

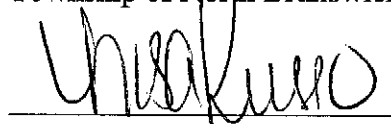
  
Michael Hritz  
Director of Community Development

  
Ronald Gordon  
Township Attorney  
Certified as to form

**RECORDED VOTE:**

COUNCIL MEMBER	YES	NO	ABSTAIN	NOTES
NARRA	✓			
NICOLA @	✓			
DAVIS	✓			
CORBIN	✓			
SOCIO ①	✓			
ANDREWS	✓			
MAYOR WOMACK				

I do hereby certify that the foregoing is a true copy of a Resolution passed by the Township Council of the Township of North Brunswick at a meeting duly held on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

  
Lisa Russo  
Municipal Clerk

C. M. Hritz  
R. Gordon  
J. Prosser

## **RIGHTS-OF-WAY USE AGREEMENT**

**THIS RIGHTS-OF-WAY USE AGREEMENT** ("Use Agreement") is dated \_\_\_\_\_, 2015 (the "Effective Date"), and entered into by and between the Township of North Brunswick ("Municipality"), a New Jersey municipal corporation, having its address at 710 Hermann Road, North Brunswick, New Jersey, and Fiber Technologies Networks, L.L.C. ("Fibertech"), a New York limited liability company with offices located at 300 Meridian Centre, Rochester, New York 14618.

### **RECITALS**

**WHEREAS**, Fibertech has been approved by the New Jersey Board of Public Utilities ("NJBP") to provide local exchange and interexchange telecommunications services throughout the State of New Jersey by Order of Approval in Docket NO. TE05080683 on September 14, 2005. Pursuant to such authority granted by the Board, Fibertech may locate, place, attach, install, operate and maintain facilities within municipal rights-of-way for purposes of providing telecommunications services; and

**WHEREAS**, Fibertech proposed to place telecommunication facilities aerially on existing utility poles or in underground conduit in the public rights-of-way within the Municipality for the purpose of constructing, installing, operating, repairing and maintaining a telecommunications system; and

**WHEREAS**, it is in the best interest of the Municipality and its citizenry for the Municipality to grant consent to Fibertech to occupy said public rights-of-way within the Municipality for this purpose; and

**WHEREAS**, the consent granted herein is for the non-exclusive use of the public rights-of-way within the Municipality for the purpose of constructing, installing, operating, and maintaining a telecommunications system;

**NOW THEREFORE**, in consideration of the mutual covenants and obligations hereinafter set forth, the Municipality and Fibertech hereby agree to and with each other as follows:

**Section 1. Definitions.**

- a. "Fibertech" is the grantee of rights under this Use Agreement and is known as Fiber Technologies Networks, L.L.C., its successors and assigns.
- b. "NJBPU" is the New Jersey Board of Public Utilities.
- c. "Public Utility" means any public utility defined in N.J.S.A. 48:2-13.
- d. "Rights-of-Way" means the areas devoted to passing under, over, on or through lands with public utility facilities.
- e. "Municipality" is the grantor of rights under this Use Agreement and is known as the Township of North Brunswick, County of Middlesex, State of New Jersey.
- f. "Utility Pole" means, in addition to its commonly accepted meaning, any wires or cable connected thereto and any replacement thereof which are similar in construction and use.

**Section 2. Grant of Consent.**

The Municipality hereby grants Fibertech its municipal consent for the non-exclusive use of the public rights-of-way for the purpose of constructing, installing,

operating, and maintaining a telecommunications system. The consent granted herein shall be for the performance of work within the rights-of-way of the Municipality only.

**Section 3. Public Purpose.**

It is deemed to be in the best interests of the Municipality and its citizenry, particularly including commercial and industrial citizens, for the Municipality to grant consent to Fibertech to occupy said public rights-of-way within the Municipality for this purpose.

**Section 4. Project Description.**

Any construction to be undertaken for the purposes described herein shall require prior notice by Fibertech to the Municipality. Fibertech shall fully describe the construction to be undertaken and shall coordinate and work with the appropriate Municipal departments before scheduling and commencing any construction. Prior to commencing any excavation work, Fibertech or its authorized contractor shall obtain a road opening permit from the Municipality.

**Section 5. Scope of Use Agreement.**

Any and all rights expressly granted to Fibertech under this Use Agreement, which shall be exercised at Fibertech's sole cost and expense, shall be subject to the prior and continuing right of the Municipality under applicable laws to use any and all parts of the municipal rights-of-way exclusively or concurrently with any other person or persons, and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect such Municipal rights-of-way. Nothing in this Use Agreement shall be deemed to grant, convey, create or

vest in Fibertech a real property interest in land, including any fee, leasehold interest, easement, or any other form of interest or ownership.

Permission and authority are both hereby granted to Fibertech to install telecommunications facilities or to lease or obtain for such telecommunications facilities existing conduit or utility pole space in the municipal right-of-way in the Municipality in order to provide telecommunications services to the public, and to operate, maintain and repair said facilities.

Subject to obtaining the permission of the owner(s) of existing Utility Poles, which shall be the sole responsibility of Fibertech to undertake and obtain, the Municipality hereby authorizes and permits Fibertech to enter upon the Municipality's rights-of-way and to attach, install, operate, maintain, remove, reattach, reinstall, relocate and replace telecommunications facilities, in or on Utility Poles or other structures or to be constructed by Fibertech located within the Municipality's rights-of-way as may be permitted.

If Fibertech's installation requires the re-location of any pre-existing utility lines belonging to any other public utility which might affect the infrastructure of the Township, Fibertech shall notify the Township of the need to relocate said utility lines, and Fibertech shall solely take any and all action necessary to effect said re-location with the public utility[ies], including but not limited to obtaining permission to re-locate said lines and the resolution of any costs and/or expenses associated therewith.

#### **Section 6. Compliance with Ordinance.**

Fibertech shall comply with all existing ordinances of the Municipality as may be amended from time to time and with all future ordinances as may be enacted.

**Section 7. Municipal Costs.**

Fibertech agrees to pay reasonable costs incurred by the Municipality by reason of Fibertech telecommunications system, including, but not limited to, Municipality's attorneys fees for the negotiation and preparation of this Use Agreement and accompanying resolution authorizing its execution.

**Section 8. Duration of Consent.**

The non-exclusive municipal consent granted herein shall expire fifty (50) years from the Effective Date of this Use Agreement. Upon expiration of such consent, or at such earlier date that Fibertech ceases to maintain its facilities, it shall remove the facilities at its cost and expense.

**Section 9. Indemnification.**

Fibertech, its successors, assigns, sub-contractors, agents, servants, officers, employees, designees, guests and invitees, hereby indemnify, defend and hold harmless the Municipality, its successors and assigns, elected officials, officers, employees, servants, contractors, designees and invitees from and against any and all claims, demands, suits, actions at law or equity or otherwise, judgments, arbitration determinations, damages, liabilities, decrees of any person(s) or entities claiming to be or being harmed as a result of Fibertech's actions under this Use Agreement and costs in connection therewith. This indemnification shall specifically include, but not be limited to, any and all costs, reasonable attorneys fees, court costs and any other expenses that may be incurred by the Municipality in connection with any and all claims, demands, suits, actions at law or equity or otherwise and/or arbitration proceedings which may arise in connections with Fibertech activities pursuant to the rights granted in this Use Agreement.

**Section 10. Notices.**

All notices or other correspondence required or permitted to be given in connection with this Use Agreement shall be in writing and delivered personally, by telecopy, by overnight carrier service or by registered or certified mail to the parties at the following addresses:

To Fibertech at: Charles B. Stockdale  
Vice President and General Counsel  
Fiber Technologies Networks, L.L.C.  
300 Meridian Centre  
Rochester, New York 14618

With a copy to: Judith A. Newkirk  
Director of Regulatory Affairs & Compliance  
Fiber Technologies Networks, L.L.C.  
300 Meridian Centre  
Rochester, New York 14618

To the Municipality: Township of North Brunswick  
710 Hermann Road  
North Brunswick, New Jersey 08902  
Attn: Municipal Clerk

**Section 11. Liability Insurance.**

Fibertech shall at all times maintain a comprehensive liability insurance policy with a single amount of at least One Million Dollars (\$1,000,000.00) covering liability for any death, personal injury, property damage or other liability arising out of the construction and operation contemplated herein, and as excess liability policy (or "umbrella") policy amount in the amount of Five Million Dollars (\$5,000,000.00).

Prior to the commencement of any work pursuant to this Use Agreement, Fibertech shall file with the Municipality Certificates of Insurance with endorsements evidencing the coverage provided by said liability and excess liability policies.



The Municipality shall notify Fibertech within fifteen (15) days after the presentation of any claim or demand to the Municipality, either by suit or otherwise, made against the Municipality on account of any of Fibertech's or its sub-contractors, agents, employees, officers, servants, designees, guests and invitees, activities pursuant to the rights granted in this Use Agreement.

**Section 12. Assignment.**

Fibertech may not assign this Use Agreement without the written consent of the Municipality, except that Fibertech shall have the right, upon notice to the Municipality, to assign this Use Agreement without the Municipality's consent, provided, however, that such assignment is approved by the NJBPU.

**Section 13. Successors and Assigns.**

The terms and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

**Section 14. Governing Law.**

This Use Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey.

**Section 15. Incorporation of Prior Agreements.**

This Use Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof, and no prior other written or oral agreement or undertaking pertaining to any such matter shall be effective for any purpose.

**Section 16. Modification of Agreement.**

This Use Agreement may not be amended or modified, nor may any obligation hereunder be waived orally, and no such amendment, modifications or waiver shall be

effective for any purpose unless it is in writing and signed by the party against whom enforcement thereof is sought.

**Section 17. Invalidity.**

If any provision hereof shall be declared invalid by any court or in any administrative proceedings, then the provisions of this Use Agreement shall be construed in such manner so as to preserve the validity hereof and the substance of the transaction herein contemplated to the extent possible. The headings are provided for purposes of convenience of reference only and are not intended to limit, define the scope of or aid in interpretation of any of the provisions hereof.

**Section 18. Counterparts.**

This Use Agreement may be executed and delivered in several counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes.

**IN WITNESS WHEREOF**, this Use Agreement has been executed as of the date set forth below.

**FIBER TECHNOLOGIES NETWORKS, L.L.C.**  
By: Fibertech Networks, LLC, its sole member

Witness

\_\_\_\_\_  
Charles B. Stockdale  
Vice President and General Counsel

Print Name: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_ **OF** \_\_\_\_\_

Witness

**TOWNSHIP OF NORTH BRUNSWICK**

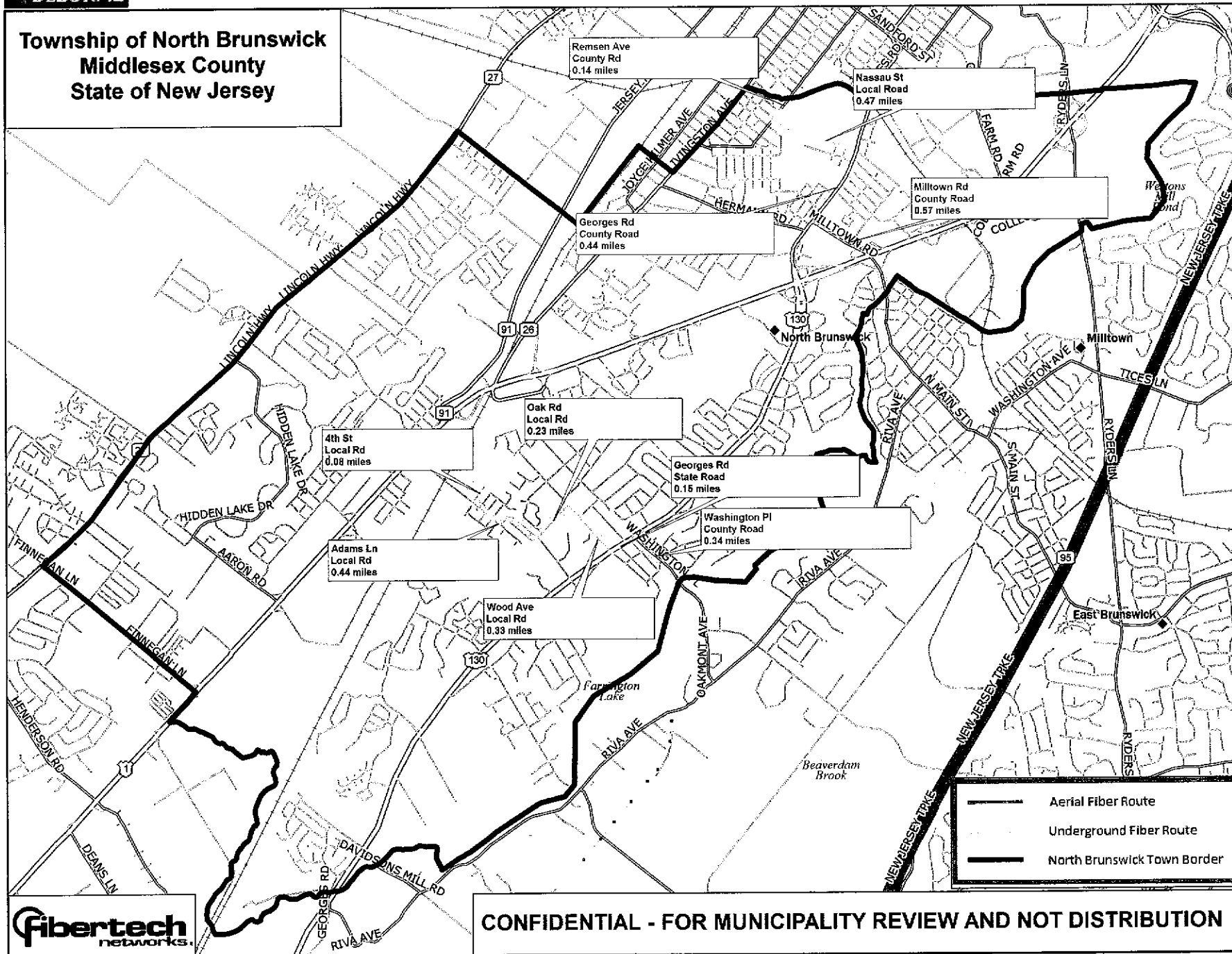
Print Name: \_\_\_\_\_  
Mayor

Print Name: \_\_\_\_\_  
Clerk

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

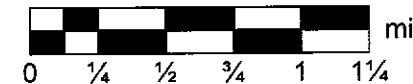
**Township of North Brunswick  
Middlesex County  
State of New Jersey**



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